

TROPICAL NUT & FRUIT CO.,

Plaintiff(s),

vs.

ANDALUCIA NUTS COMPANY,

Defendant(s).

support maintenance of such defense is unavailing, as that rule requires joinder of a non-party only if, in that non-party's absence, the court cannot accord complete relief among existing parties. Id. Defendant has not plausibly alleged that the court "cannot accord complete relief among existing parties," which is required to assert Rule 19(a)(1)(A) defensively. While defendant apparently contends that it was Whole Foods that directed it to produce products that allegedly infringe plaintiff's federally-registered DIET DELIGHT, STUDENT FOOD, and CINNAMON SPLENDOR marks, such does not appear to be a cognizable defense to plaintiff's claims of willful infringement by this defendant's conduct. As plaintiff and defendant are the only "existing parties" to the lawsuit, and the court has authority to afford complete relief to plaintiff if defendant's alleged acts of infringement are proven, Whole Foods is not a necessary party under Rule 19. Thus, the Fourth Affirmative defense will be stricken.

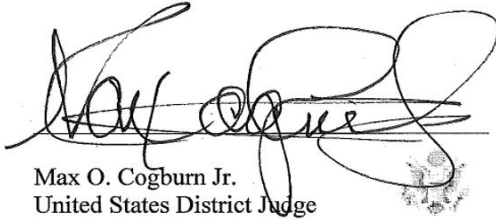
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Finally, in allowing plaintiff's motion, the court takes no position on whether defendant can bring a third party claim against Whole Foods or seek joinder of Whole Foods for purposes of contribution under some theory of contributory trademark infringement. See Inwood Labs., Inc. v. Ives Labs., Inc., 456 U.S. 844, 855 (1982) (To be liable for contributory trademark infringement, a defendant must have (1) "intentionally induced" the primary infringer to infringe, or (2) continued to supply an infringing product to an infringer with knowledge that the infringer is mislabeling the particular product supplied). Inasmuch as the issues have now joined, respective counsel are advised to promptly conduct the IAC and submit their CIAC and proposed Pretrial Order to Judge Keesler within the time provided by the Local Civil Rules.

ORDER

IT IS, THEREFORE, ORDERED plaintiff's Motion to Strike First and Fourth Affirmative Defenses (#7) is **ALLOWED**, and defendant's First and Fourth affirmative defenses are stricken.

Signed: January 3, 2013



Max O. Cogburn Jr.
United States District Judge